

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>ALEXANDER N. PENN,</b>	)	<b>CASE NO. 1:06CR14</b>
	)	<b>1:16CV2681</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE JOHN R. ADAMS</b>
	)	
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>ORDER AND JUDGMENT ENTRY</b>
	)	
<b>Respondent.</b>	)	
	)	

The instant matter is before the Court upon Petitioner Alexander Penn's Successive Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed pursuant to 28 U.S.C. § 2255. Doc. 55. The petition is DENIED as MOOT.

While Penn filed his petition on November 2, 2016, the Sixth Circuit did not authorize this Court to consider the successive petition until October 26, 2017. Within his petition, Penn asserts that he was improperly categorized as an armed career criminal under the now defunct residual clause. Penn's petition, however, is moot.

On January 24, 2014, Penn was released from BOP custody and began serving his five-year term of supervised release. Ordinarily, this release would not moot the petition because success could possibly shorten Penn's term of supervised release. *See United States v. James*, 2015 WL 5655979, at \*2, n. 3 (S.D. Ohio Sept. 25, 2015). However, prior to this Court receiving this matter back from the Sixth Circuit, Penn violated the terms of his supervised release. On October 10, 2017, this Court sentenced Penn to five years incarceration for the violation and terminated any

further supervised release. Accordingly, there is no relief that Penn can obtain from this Court in his pending § 2255 petition. As such, the petition must be DENIED as MOOT.

### **III. CONCLUSION**

For the foregoing reasons, Petitioner Alexander Penn's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is hereby **DENIED AS MOOT.**

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

**IT IS SO ORDERED.**

Dated: November 30, 2017

/s/ John R. Adams  
**JOHN R. ADAMS**  
**UNITED STATES DISTRICT JUDGE**